IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5385 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GULABBHAI BARJULBHAI PATEL - Petitioner(s)
Versus
MAGANBHAI P PATEL & 1 - Respondent(s)

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Appearance :

MR AJ PATEL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 – 2.

MR DA DESAI, ASST. GOVERNMENT PLEADER for Respondent Nos.2 to 4

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/06/2006

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal (for short “the Tribunal”)

dated 27-1-1995 passed in Revision Application No.TEN.BS. 249 of 1990 in dismissing the same and confirming the order passed by the Deputy Collector (Land Reforms) Appeal, Valsad passed in Tenancy Revision Application No.1668 of 1986, by which the Deputy Collector in exercise of suo motu revision powers has set aside the order passed by the Mamlatdar and ALT, Chikhli dated 30-12-1983 passed in a proceedings under Section 70, 70-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “the Act”) declaring the petitioner as tenant of the land in question.

2. The dispute is with regard to land bearing Block No.159paiki admeasuring 2 acres and 27 gunthas of land situated at village Ghamghuma. Petitioner claims to be the tenant of the land in question of respondent No.1 herein i.e. original land owner. Petitioner submitted an application before the Mamlatdar and ALT, Chikhli being Tenancy Case No.70(B) 9720 of 1983 under Section 70(B) of the Act declaring him to be the tenant of the land in question. The Mamlatdar and ALT, Chikhli by its order dated 30-12-1983 allowed the said application declaring the petitioner as tenant. The Deputy Collector took the order passed by the Mamlatdar and ALT under suo motu

revision exercising powers under Section 76(A) of the Act and considering the fact that the land was a restricted land under Section 73(AA) of the Bombay Land Revenue Code and without considering the same, the order has been passed by the Mamlatdar and ALT declaring the petitioner as tenant and considering the fact that as the land in question was a restricted land under Section 73(AA) of the Bombay Land Revenue Code which could not have been transferred without prior permission of the Collector and to avoid the same, tenancy case has been created and therefore, by order dated 15-11-1988, allowed the said Revision Application No.1668 of 1986 and set aside the order passed by the Mamlatdar and ALT, Chikhli dated 30-12-1983. Being aggrieved by and dissatisfied with order passed by the Deputy Collector, the petitioner preferred revision application before the Tribunal being Revision Application No.TEN.BS. 249 of 1990 and the Tribunal by its judgment and order dated 27-1-1995 dismissed the said revision application confirming the order passed by the Deputy Collector. Being aggrieved by and dissatisfied with the judgment and order passed by the Tribunal, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri Shital Patel, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Deputy Collector has exercised the suo motu revisional powers under Section 76(A) of the Act beyond the period of one year, which is contrary to Section 76(A) of the Act and therefore, the order passed by the Deputy Collector is without jurisdiction and is a nullity. He has also further submitted that if this court comes to a conclusion that the Deputy Collector exercised the powers within a stipulated time of one year, in that case also on merits the order passed by the Deputy Collector requires to be quashed and set aside as provisions of Section 73(AA) came to be introduced in the year 1981 and the petitioner was in possession of the land in question since many years i.e. more than 25 to 30 years prior to 1981 and therefore, provisions of Section 73(AA) would not be applicable. He has relied upon the judgment of this court in the case of **Thakorbhai Tribhovandas Rao and Others V. State of Gujarat and Others** reported in 1995(1) GLR 636 in support of his above submission with regard to exercising of powers under Section 76(A) of the Act beyond a period of one year and therefore, it is requested to allow the present Special Civil Application. He has also further submitted

that even the original landlord himself has admitted that the petitioner was in possession of the land admeasuring 2 acres and 27 gunthas since last 24 years and if that is so, Section 73(AA) would not be applicable and that the Mamlatdar and ALT has rightly declared the petitioner as tenant with respect to land admeasuring 2 acres and 27 gunthas.

4. None represents respondent No.1.

5. Shri Dipan Desai, learned AGP appeared on behalf of respondent Nos.2 to 4 and has supported the judgment and order passed by the Tribunal as well as the order passed by the Deputy Collector and has submitted that so far as the contention on behalf of the petitioner that the Deputy Collector exercised the powers after a period of one year is concerned, no such objection/submission was made before the Deputy Collector and it being a question of fact, it could not have been raised for the first time before the Tribunal. He has further submitted that even the Deputy Collector in its order has specifically mentioned that record and proceedings was called for within a period of one year and in that view of the matter, provisions of Section 76(A) of the Act has been

complied with. It is also further submitted by him that what is required is calling for the record and proceedings from the office of the Mamlatdar within a period of one year and not actually issuing the notice within a period of one year. It is submitted that even in the judgment, which is relied upon by the petitioner emerges that it is suffice if the record and proceedings are called by the Deputy Collector within one year and actual notice might have been issued subsequently. So far as the contention with regard to Section 73(AA) is concerned, it is submitted that it is also a question of fact and the said question was not even considered by the Mamlatdar and ALT while declaring the petitioner as tenant and therefore, at the most, the matter may be remanded to the Mamlatdar and ALT to consider whether there was any breach of Section 73(AA) of the Code or not before declaring the petitioner as a tenant.

6. Heard the learned advocates appearing on behalf of the parties.

7. So far as the contention on behalf of the petitioner that the Deputy Collector exercised the suo motu revisional powers under Section 76(A) of the Act after a

period of one year is concerned, first of all, It is required to be noted that such a contention was not raised before the Deputy Collector, who exercised the suo motu revisional powers under Section 76(A) of the Act. It is a question of fact, which could not have been raised for the first time before the Tribunal and/or before this court. Apart from that the Deputy Collector himself in his order dated 15-11-1988 has observed that he has exercised the powers within stipulated time. In view of the above clear cut finding, the contention on behalf of the petitioner cannot be accepted. Even, otherwise, the Tribunal on appreciation of evidence and calling for the record, has also held that the Deputy Collector had called for the record and proceedings within a period of one year and this court in a petition under Article 227 of the Constitution of India is not required to re-appreciate the evidence on record. In view of the above when it is found that the Deputy Collector has called for the record and proceedings within a period of one year, then provisions of Section 76(A) has been complied with. Therefore, the contention on behalf of the petitioner that the order passed by the Deputy Collector is nullity or without jurisdiction cannot be accepted.

8. So far as the contention with regard to Section 73(AA) of the Bombay Land Revenue Code and the land being restricted land is concerned, It is required to be noted that the Deputy Collector has observed that the Mamlatdar and ALT, Chikhli while declaring the petitioner as tenant, has not considered the said aspect at all. If the Deputy Collector was of the opinion that the Mamlatdar and ALT has not considered the same, then he should have remanded the matter to the Mamlatdar for considering the same. Under the circumstances, whether there is a breach of Section 73(AA) of the Bombay Land Revenue Code or not and still the petitioner can be declared as a tenant of the land in question is to be considered by the Mamlatdar and ALT and for that purpose, the matter is required to be remanded to the Mamlatdar and ALT for deciding the said question afresh.

9. For the reasons as stated above, the petition succeeds in part. The matter is remanded to the Mamlatdar and ALT for deciding the question, whether there was a breach of Section 73(AA) of the Bombay Land Revenue Code or not and whether still the petitioner can be declared as a tenant under Section 70(B) of the Act or not and for this limited purpose, the matter is remanded. The

Mamlatdar and ALT to complete the proceedings on remand within a period of one year from the date of receipt of this order after giving an opportunity to all the concerned parties. Rule is made absolute to the aforesaid extent. No costs.

(M.R.SHAH,J.)

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